



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 07 2010

Harry Pascal, Treasurer
Dan Seals for Congress
PO Box 584
Wilmette, IL 60091

RE: MUR 6221
Dan Seals for Congress and Harry Pascal, in
his official capacity as treasurer

Dear Mr. Pascal:

On October 22, 2009, the Federal Election Commission ("Commission") notified Dan Seals for Congress and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 25, 2010, the Commission found, on the basis of the information in the complaint and information provided by you, that there is no reason to believe Dan Seals for Congress or you violated 2 U.S.C. § 441a(f). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

10044272340

10044272341

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Dan Seals for Congress MUR: 6221
and Harry Pascal, in his
official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by William James Scoggin, *see* 2 U.S.C. § 437g(a)(1), alleging that Transfund PAC (“Transfund” or “PAC”), Representative Carolyn Kilpatrick’s leadership PAC, improperly filed a “Notification of Multicandidate Status” (FEC Form 1M) with the Federal Election Commission (“Commission” or “FEC”) without meeting the qualification requirements for a multicandidate committee. The complaint alleges that because Transfund did not qualify as a multicandidate committee and thereby gain eligibility for a higher limit on its contributions, Transfund made an excessive contribution when it contributed \$2,000 on September 30, 2008, and \$1,000 on October 31, 2008, to Dan Seals for Congress (“Seals Committee”). Complaint at 1-2.

Transfund explains that the PAC achieved multicandidate status on July 1, 2008, after having been in existence for at least six months, contributing to more than five federal candidates, and receiving contributions from fifty-one contributors, pursuant to 2 U.S.C. § 441a(a)(4) and 11 C.F.R. § 100.5(e)(3). As such, the PAC’s contributions to the Seals Committee did not exceed the limits for multicandidate committees. The Seals Committee responds that until receipt of the complaint, it was not aware that Transfund may not have qualified for multicandidate committee status. Seals Committee Response at 1-2. Upon receipt of Transfund’s contribution, the committee’s treasurer verified the legitimacy of the PAC by reviewing Transfund’s Form 1M on the FEC’s website. *Id.* at 1. However, upon receipt of the

1 complaint, the Seals Committee refunded Transfund's allegedly excessive contribution totaling
2 \$700, apparently out of an abundance of caution. *Id.* at 1-2 and Exhibit D.

3 As discussed in further detail below, Transfund properly qualified as a multicandidate
4 committee. Thus, the PAC's contributions to the Seals Committee were not excessive.
5 Accordingly, the Commission finds no reason to believe that Dan Seals for Congress and Harry
6 Pascal, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f).

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 The Federal Election Campaign Act of 1971, as amended ("the Act") provides that no
9 person shall make contributions to any candidate and his or her authorized political committee
10 with respect to any election for federal office which, in the aggregate, exceed \$2,300 for the
11 2008 election cycle, or to any other political committee in any calendar year which, in aggregate,
12 exceed \$5,000. 2 U.S.C. § 441a(a)(1)(A) and (C); 11 C.F.R. § 110.1(b) and (d); *Price Index*
13 *Increases for Expenditure and Contribution Limitations*, 72 Fed. Reg. 5294, 5295 (Feb. 5, 2007).
14 Additionally, multicandidate committees are prohibited from making contributions in excess of
15 \$5,000 to any candidate and his or her authorized committee with respect to any election for
16 federal office. 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R. § 110.2(b). Candidates and their committees
17 are prohibited from knowingly accepting any contributions in excess of the Act's limitations.
18 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

19 **A. Transfund's Multicandidate Committee Status**

20 Transfund, the leadership PAC for Representative Carolyn Kilpatrick, has been registered
21 with the Commission since December 16, 2006. *See* Statement of Organization. The Act
22 defines a "leadership PAC" as a political committee that is directly or indirectly established,
23 financed, maintained, or controlled by a candidate for Federal office or an individual holding

10044272342

1 Federal office, but which is not an authorized committee of the candidate or individual and
2 which is not affiliated with an authorized committee of the candidate or individual. 2 U.S.C.
3 § 434(i)(8)(B). Although associated with a particular candidate, a leadership PAC is not legally
4 affiliated with the candidate's principal campaign committee and is treated as a non-connected
5 committee. See 11 C.F.R. § 100.5(g)(4); *Final Rules and Explanation and Justification on*
6 *Leadership PACs*, 68 Fed. Reg. 67013 (Dec. 1, 2003).

7 A leadership PAC can qualify as a multicandidate committee. A multicandidate
8 committee is a political committee that (1) has been registered with the Commission for at least
9 six months; (2) has received contributions from more than 50 persons; and (3) has made
10 contributions to at least five federal candidates. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3).
11 A committee shall certify to the Commission that it has satisfied the criteria for becoming a
12 multicandidate committee by filing an FEC Form 1M (Notification of Multicandidate Status)
13 with the Commission within 10 days of the date that the committee meets these criteria.
14 11 C.F.R. § 102.2(a)(3).

15 Once qualified as such, a multicandidate committee may give a candidate up to \$5,000
16 per election and can receive up to \$5,000 per calendar year from a contributor. 11 C.F.R.
17 §§ 110.1(d) and 110.2(b). A multicandidate committee that makes a contribution is required to
18 notify the recipient in writing of its status as a multicandidate committee. 11 C.F.R.
19 § 110.2(a)(2).

20 The complaint alleges that Transfund claimed multicandidate committee status in July
21 2008 without having fully qualified, thus making some of the PAC's contributions excessive.
22 Specifically, the complaint questions whether the PAC received more than 50 contributions by
23 July 1, 2008, as stated on Transfund's Form 1M. Complaint at 1. The complaint states that a

10044272343

1 review of the committee's disclosure reports indicates that the PAC did not receive contributions
2 from 51 persons during the 2008 election cycle, but rather only received contributions from 47
3 donors by June 30, 2008. *Id.* In addition, the complaint alleges that two persons disclosed on
4 the PAC's reports contributed six times and were counted as six persons toward the 51
5 contributor requirement. *Id.*

6 Based on a review of relevant materials, it appears that Transfund met the requirements
7 for multicandidate committee status. 2 U.S.C. § 441a(a)(4). Because it filed its first Statement
8 of Organization with the Commission on December 19, 2006, Transfund had been registered
9 with the Commission for more than six months at the time it sought multicandidate committee
10 status. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3). Further, according to its FEC disclosure
11 reports, by the Fall of 2007 it had already made contributions to more than 5 federal candidates.
12 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3); *see* Transfund's 2007 Mid-Year and Year End
13 Reports and FEC Form 1M dated July 14, 2008.

14 Based on the available information, it appears that Transfund had 51 contributors at the
15 time period at issue. Contrary to the complaint's allegations, contributors do not appear to have
16 been counted more than once toward the multicandidate committee status contributor
17 requirement. Transfund's disclosure reports showed that it had received 49 itemized
18 contributions by August 1, 2008. *See* 2006 Year End Report, 2007 Mid-Year Report, 2007 Year
19 End Report, 2008 April Quarterly Report, 2008 July Quarterly Report, and 2008 October
20 Quarterly Report. However, Transfund has clarified that it received two contributions on
21 January 26, 2007, and May 23, 2008, in the amounts of \$100 and \$5, respectively, which were
22 not required to be itemized in its disclosure reports but would count toward its contributor
23 requirement for multicandidate committee status. 2 U.S.C. § 434(b)(3). This clarification is

10044272344

1 consistent with information on the PAC's Detailed Summary Pages of its disclosure reports. Its
2 2007 Mid-Year Report, filed with the Commission on July 31, 2007, disclosed \$100 in
3 unitemized receipts on page 3 of the Detailed Summary Pages. Additionally, Transfund's 2008
4 July Quarterly Report, filed with the Commission on July 14, 2008, reflects \$5 in unitemized
5 receipts on page 3 of the Detailed Summary Pages.

6 Finally, it appears that Transfund properly filed its Form IM with the Commission after,
7 not before, meeting the contributor requirement for multicandidate committee status. Although
8 Transfund's disclosure reports indicate that it received a contribution from its fifty-first
9 contributor on August 1, 2008--instead of July 1, 2008--Transfund explains that it had
10 incorrectly reported the date of receipt of contributions from contributors 50 and 51. According
11 to Transfund, those contributions should have been reported as having been received on July 1,
12 2008. Copies of the relevant checks support this claim. The checks from Matthew Moroun and
13 Nora Moroun were dated June 30, 2008, but handwritten notations next to the copies of each
14 check indicate that they were received on July 1. As of the writing of this analysis, the PAC has
15 not yet amended its 2008 October Quarterly Report to reflect the correct date of the contributions
16 from Matthew and Nora Moroun.¹

17 Based on the information discussed above, Transfund appears to have qualified as a
18 multicandidate committee by being registered with the Commission for over six months, having
19 contributed to at least five federal candidates, and having received contributions from over 50
20 persons. 2 U.S.C. § 441a(a)(4); 11 C.F.R. § 100.5(e)(3).

¹ A review of Transfund's disclosure reports also revealed the receipt of two contributions from "NGP Software," the PAC's compliance software provider. However, based on identical disbursements the PAC made to NGP Software on the same dates, the report of receipts from NGP Software appears to have been an error.

B. Alleged Excessive Contributions by Transfund

Based on its allegation that Transfund did not properly qualify as a multicandidate committee, the complaint concludes that the PAC's contributions to the Seals Committee were limited to the amounts set for persons other than multicandidate committees (e.g., \$2,300 in 2008). 2 U.S.C. § 441a(a)(1)(A). The contributions at issue are as follows:

DATE	COMMITTEE	AMOUNT	ELECTION
9/30/2008	Dan Seals for Congress	\$2,000	General
10/31/2008	Dan Seals for Congress	\$1,000	General

Because it properly qualified as a multicandidate committee, Transfund was permitted to make contributions to candidates of up to \$5,000 per election. 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R. § 110.2(b). Therefore, its contributions to the Seals Committee totaling \$3,000 for the general election, did not exceed the contribution limits of the Act. As such, the Seals Committee was not required to refund Transfund's contribution. *Supra* at 2. Accordingly, the Commission finds no reason to believe that Dan Seals for Congress and Harry Pascal, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f).